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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,374	03/01/2004	Thomas J. Fogarty	2484 CON 10	9359

50855 7590 03/21/2008
Tyco Healthcare Group LP
60 MIDDLETOWN AVENUE
NORTH HAVEN, CT 06473

EXAMINER

TRUONG, KEVIN THAO

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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03/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,374	FOGARTY ET AL.	
	Examiner	Art Unit	
	Kevin T. Truong	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 01/07/2008 has been entered.

1. Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin (U.S. 5,591,183) in view of Michelson (U.S. 5,423,842).

Note in figures 7 and 8, Chin teaches the method steps as claimed by providing a long slender rod (700) with a handle (704); wherein the slender rod (700) including first and second segments, at least one of the segments being substantially coaxial with the handle (704); wherein the rod (700) including a first **sideways** hook (708) and second **sideways** hook (710) extending from the rod (700) in an opposing direction from the first **sideways** hook (708); manipulating

the rod (700) so as to slide the **sideways** hooks (708,710) around the artery (502); pushing and/or pulling the rod (700) to slide the **sideways** hooks (708,710) along the artery until the artery is separated from the surrounding tissue (see figures 8A-8C and col. 8, lines 1-28); and furthermore, wherein the **sideways** hook (710) defines an arc which is inherently capable of being within about 180 to about 270 degree. Chin does not disclose the obtuse angle between the first segment and second segment of the rod, as recited in the claims.

However, Michelson teaches in figure 1, that it is known in the surgical art to have a long slender rod having first segment and second segment defining an obtuse angle therebetween.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make Chin's first segment defines an obtuse angle relative to the second segment as taught by Michelson in order to provide offset of the first and second segments of the slender rod which allow unobstructed visualization of the hooks when operating on harvesting the artery.

2. Claims 1-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mull (U.S. 5,122,152) in view of Michelson (U.S. 5,423,842).

Note in figures 1 and 2, Mull teaches a long slender rod (12) with a handle (18); wherein the slender rod (12) including first and second segments, at least one of the segments being substantially coaxial with the handle (18); wherein the rod (12) including a first **sideways** hook (28) and second **sideways** hook (32)

extending from the rod (12) in an opposing direction from the first **sideways** hook (28); pushing and/or pulling the rod (12) to slide the **sideways** hooks (28,32) can be used along the artery until the artery is separated from the surrounding tissue; and furthermore, wherein the **sideways** hook (28) defines an arc which is inherently capable of being within about 180 to about 270 degree; wherein the hooks (28,32) being spaced longitudinally from each other. Mull does not disclose the obtuse angle between the first segment and second segment of the rod, as recited in the claims.

However, Michelson teaches in figure 1, that it is known in the surgical art to have a long slender rod having first segment and second segment defining an obtuse angle therebetween.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make Chin's first segment defines an obtuse angle relative to the second segment as taught by Michelson in order to provide offset of the first and second segments of the slender rod which allow unobstructed visualization of the hooks when operating on harvesting the artery.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/
Primary Examiner, Art Unit 3734

ktt